



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

CRS
Docket No: 4153-99
19 July 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552
(b) DOD Directive 6130.3

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to allow his enlistment in the Navy in pay grade MS3 (E-4).

2. The Board, consisting of Mr. Tew, Mr. Silberman and Ms. Humberd, reviewed Petitioner's allegations of error and injustice on 28 June 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Navy on 3 September 1987 at age 20. He then served without any disciplinary actions and was advanced to MS3.

d. On 25 January 1991 a physical evaluation board (PEB) found him unfit for duty due to an idiopathic seizure disorder. He had two seizures within 24 hours in December 1990. On 12 April 1991 he was honorably separated and transferred to the Temporary Disability Retired List (TDRL).

e. On 22 November 1995 a PEB found Petitioner fit for duty and eligible for reenlistment.

f. Subsequently, Petitioner reported for reenlistment so that he could complete his Navy career. While the record does not contain any physical examination forms from a Military Enlistment Processing Station (MEPS), Petitioner states that MEPS found him unfit for duty due to idiopathic seizure disorder.

g. On 9 July 1996 the Bureau of Medicine and Surgery (BUMED) disapproved a medical waiver for reenlistment, stating that his last seizure was in 1990 and he only discontinued Dilantin in June 1994. BUMED was apparently unaware of the PEB decision. Further, the disapproval incorrectly stated that an individual must wait five years from his last seizure or medication. Therefore, because he was unable to reenlist, Petitioner was honorably discharged by reason of expiration of term of service.

h. Petitioner states, in effect, that he waited to complete the five year period without medication to apply for reenlistment. Apparently, recruiters are not interested in processing a waiver package.

i. Reference (b) states that individuals found fit for duty while on the TDRL should be permitted to reenlist. Reenlistment cannot be denied based solely on the condition for which the individual was placed on the TDRL and was subsequently found fit for duty.

j. The Board is aware that regulations only allow for the assignment of an RE-3P or an RE-4 reenlistment code when an individual is transferred to the TDRL.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board notes that although the MEPS records are unavailable it appears that his reenlistment was denied based on the same condition for which he was found fit for duty while on the TDRL. The Board also notes the passage of time since his reenlistment was denied. Given the circumstances, the Board concludes that his record should be corrected to now allow him the opportunity to reenlist.

Since the RE-3P reenlistment code was correctly assigned at the time of separation, the Board concludes that the record be corrected to show that he was assigned an RE-1 reenlistment code as of the date corrective action is approved. If Petitioner requests reenlistment within 180 days of this action, reenlistment in pay grade E-4 should be approved if he is otherwise qualified. Reenlistment should not be denied based on

his seizure disorder.

The Board further concludes that the Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand why the reenlistment code has been changed and the circumstances of the case.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that his RE-3P reenlistment code has been changed to RE-1 effective on the date this corrective action is approved.

b. That Petitioner be reenlisted in the Navy in pay grade E-4 within 180 days of the approval of this action if he is physically and morally qualified.

c. That this Report of Proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director